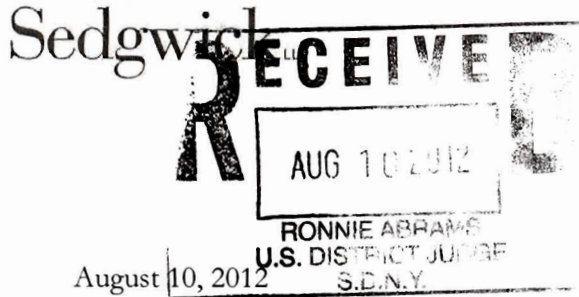


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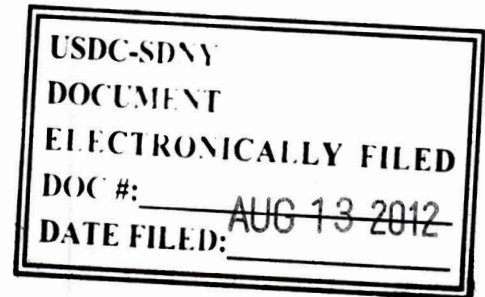


August 10, 2012

MEMO ENDORSED

(212) 898-4011

michael.bernstein@sedgwicklaw.com

*Via E-mail*

Hon. Ronnie Abrams, U.S.D.J.
United States District Court for the
Southern District of New York
500 Pearl Street, Room 620
New York, NY 10007

Re: *Howard Epstein v. Hartford Life & Accident Ins. Co.*
Civ. Act. No. 09 Civ. 5608 (RA)
File No.: 02489-000014

Dear Judge Abrams:

This office represents the defendant, Hartford Life and Accident Insurance Company ("Hartford"), in the above-referenced matter. We write in response to Plaintiff's letter dated today, requesting a fifteen-day extension of time to file his reply brief. Plaintiff's reply was due yesterday. We request that in the event the Court grants Plaintiff's request for an extension of time to file his reply, that the Court also allow Hartford the opportunity to file a short sur-reply, if necessary, for the reasons set forth below.

While plaintiff's counsel's letter suggests that he realized that he had missed the court-ordered filing date for his reply after receiving the ECF notice reflecting Hartford's timely filing of its reply last night and then, on his own initiative, wrote to the Court to request an extension of time, that is not entirely accurate. Plaintiff's counsel failed to advise the Court that his letter to the Court actually followed his receipt of an email from this office advising that we had not received Plaintiff's Reply Brief nor had we received notification from the court via ECF that Plaintiff's Reply had been filed. (A copy of the email sent this morning is attached hereto as Exhibit "A"). Counsel for both parties then had a telephone conversation this morning regarding Plaintiff's failure to timely file his Reply Brief. During that call, we advised Plaintiff's counsel that Hartford has been prejudiced by Plaintiff's failure to timely file his reply because Hartford timely submitted its reply papers, while plaintiff failed to do so. This situation allows Plaintiff to use his reply to not only to respond to points raised in Hartford's Opposition to his motion for summary judgment, but also to improperly respond to points raised in Hartford's Reply Memorandum of Law.

By Endorsed Order dated June 5, 2012 (Doc. No. 37), this Court issued a briefing schedule requiring simultaneous submissions of the parties' respective motion papers, opposition briefs and reply papers. That order clearly requires that the parties file their respective reply memoranda of law on August 9, 2012. Yesterday, Hartford complied with this Order. (Doc. No. 58). Plaintiff did not do so, although he had nearly a month to prepare reply papers after the filing of Hartford's opposition papers.

Hon. Ronnie Abrams

Re: Howard Epstein v. Hartford Life & Accident Ins. Co.

Civ. Act. No. 09 Civ. 5608 (RA)

August 10, 2012

Page 2

Plaintiff now asks that he be allowed an additional fifteen days to prepare and file his reply. However, Plaintiff now has the benefit of reviewing Hartford's reply papers to assist him in preparing his own reply, which is inconsistent with the spirit of the briefing schedule entered by this Court. We understand that Plaintiff's counsel has represented he will take steps to avoid reviewing Hartford's reply before filing his own reply papers. However, Hartford's reply is in the public record and the steps Plaintiff's counsel has offered to undertake do not ensure that Hartford will not be prejudiced by this extension.

We therefore request that in the event the Court allows Plaintiff to belatedly serve and file his reply, that the Court also allow Hartford to file a four-page sur-reply, if this appears to be necessary, to address any arguments that Plaintiff may make in response to Hartford's reply.

Thank you for your consideration of this matter.

Respectfully submitted,



Michael Bernstein
Sedgwick LLP

Enclosures
cc: Scott M. Riemer Esq.

Application denied. In their letter dated August 10, 2012, counsel for plaintiff represented that they did not upload or view defendant's reply brief and would promptly return the sealed, unopened envelope containing the brief to counsel for defendant. Accordingly, the Court is convinced that defendant is not prejudiced by its August 9, 2012 ruling w.r.t. reply brief.

SO ORDERED:



**HON. RONNIE ABRAMS
UNITED STATES DISTRICT JUDGE**

8/13/12

EXHIBIT A

From: Seybert, John
To: Scott M. Riemer Esq. (sriemer@riemerlawfirm.com)
Cc: Sharon H. Lee; Bernstein, Michael
Subject: Epstein v. Hartford
Date: Friday, August 10, 2012 9:06:03 AM

Scott,

We did not receive a copy of your reply yesterday. We also did not receive notification that it was filed with the Court. Please email us a copy with the Certificate of Service.

Very truly yours,
John

John T. Seybert

John.Seybert@sedgwicklaw.com | 212.898.4028

Sedgwick^{LLP}

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CERTIFICATE OF SERVICE

I, JOHN T. SEYBERT, hereby certify and affirm that a true and correct copy of the attached **LETTER DATED AUGUST 10, 2012** was served via E-mail on this 10th day of August, 2012, upon the following:

Scott M. Riemer, Esq.
Riemer & Associates
60 East 42nd Street, Suite 1750
New York NY 10165
Business Phone: (212) 297-0700
Business E-mail: sriemer@riemerlawfirm.com

s/_____
JOHN T. SEYBERT

Dated: New York, New York
August 10, 2012